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July 3, 2019

**BY ECF**

Hon. George B. Daniels  
United States District Court  
Southern District of New York  
500 Pearl St., Room 1310  
New York, NY 10007

Re: Letter Motion Requesting Rule 37.2 Conference and Order to Compel in *Hudson Bay Master Fund Ltd. v. Patriot National Inc., et al.*, No. 16 Civ. 02767 (GBD) (RLE)

Dear Judge Daniels:

I write on behalf of Hudson Bay Master Fund Ltd. (“Hudson Bay”) in connection with the discovery this Court has permitted pursuant to its May 28, 2019 Order. As the Court will recall, that Order permitted Hudson Bay to take discovery regarding the “basis for Patriot’s decision not to honor the Warrants.” (ECF No. 347.) This is a key issue in Hudson Bay’s tortious interference claim against Steven Mariano, since the only question left to be resolved is whether Mariano’s conduct caused Patriot’s breach. In its March 28, 2019 Memorandum of Decision, the Court recognized that Hudson Bay was previously blocked from taking such discovery because Mariano “broadly invoked privilege to prevent Hudson Bay from testing the basis” for that decision. (March 28, 2019 Mem. of Decision at 38.) On May 28, the Court authorized Hudson Bay to take discovery on that issue, clearly anticipating that claims of privilege would not be an obstacle.

Notwithstanding that Order, Patriot—which obviously possesses information relevant to its decision—is attempting to block Hudson Bay from taking discovery into this issue by continuing to improperly claim that all evidence regarding its decision is privileged. Not only has Patriot refused to produce responsive documents, but its counsel have also instructed its former board members not to offer testimony on the subject (as we have learned from speaking with counsel for these witnesses). These tactics have precluded Hudson Bay from scheduling depositions until this issue is resolved.

As set forth below, to the extent such privilege ever existed, it has long been waived. In light of the limited 60-day window in which Hudson Bay has to seek this discovery, Hudson Bay seeks an order from the Court to compel Patriot: (i) to produce all documents responsive to Hudson Bay’s document requests; and (ii) to cease instructing its prior Board members not to answer questions on this issue.

Immediately after Your Honor reopened discovery, Hudson Bay requested documents from Patriot related to its decision not to honor the Warrants—including those that Patriot had previously withheld on the basis of privilege. (See May 30, 2019 Email from B. Bondi to S. Turner, attached hereto as Ex. 1.) After initially stating that they would consider the request, counsel for Patriot recently told Hudson Bay that it is unwilling to produce the requested documents—even going so far as to refuse Hudson Bay’s service of a subpoena for the documents. (See June 26, 2019 Email from P. Linken to Z. Rowen, attached hereto as Ex. 2.) Moreover, while attempting to schedule depositions of Patriot’s former board members, Hudson Bay has learned that Patriot’s counsel has instructed these witnesses not to testify regarding the reason for Patriot’s decision not to perform on the contract at issue, on the basis that such communications are privileged and cannot be discussed. To date, Hudson Bay has not received any materials from Patriot in response to its requests; nor is there any point to Hudson Bay scheduling depositions in this matter if the witnesses are going to again claim privilege on the key issue on which they are to be deposed.

Patriot has no basis upon which to continue to assert privilege over the basis for Patriot’s decision not to honor the Warrants. To the extent privilege ever existed over the relevant communications, Mariano—Patriot’s Chief Executive Officer, President, Chairman of the Board, and designated Rule 30(b)6 representative—waived it during earlier discovery. Specifically, Mariano was repeatedly asked during his deposition about the basis for Patriot’s decision not to honor the Warrants. This included questions about his understanding regarding whether Hudson Bay was permitted to “borrow” or “short” Patriot’s shares under the operative agreements. Mariano invoked privilege in response to all such questions, and stated that all underlying discussions regarding Patriot’s decision took place in the presence of counsel. (See, e.g., Transcript of Steven M. Mariano (“Mariano Tr.”), attached hereto as Ex. 3, at 96:4-18 (“Q: Mr. Mariano, is, is there any basis for your decision other than -- not to honor the warrants -- other than the advice of counsel? MR. WILSON: “Your” being Patriot National? MR. GOLDBERGER: Patriot National. ***A. Other than the advice of counsel, no.***”); Mariano Tr. at 103:16-106:13 (“Q. Other than your counsel, did you have any discussions about borrowing or shorting stock with respect to the December 13th agreement before it was signed? ***A. I don’t believe so.***”); Mariano Tr. at 189:6-191:21 (stating that conversations with counsel provided the sole basis for his statement in an e-mail that contract with Hudson Bay barred the “[s]hort sale or holding of shares to short before the deal closed”).)

Mariano’s invocation of the privilege to block inquiry into these key issues is a clear and unambiguous waiver, binding Mariano and Patriot alike. This Circuit follows the well-established doctrine that a party waives the privilege when it invokes the protection to block inquiry into its state of mind while also claiming that its actions were permissible. See *United States v. Bilzerian*, 926 F.2d 1285, 1292 (2d Cir. 1991) (holding that the attorney-client privilege “may implicitly be waived when defendant asserts a claim that in fairness requires examination of protected communications”); *Pereira v. United Jersey Bank*, 1997 WL 773716, at \*6 (S.D.N.Y. Dec. 11, 1997) (stating that a party “cannot be permitted, on the one hand, to argue that it acted in good faith and without an improper motive and then, on the other hand to deny . . . access to the advice given by counsel where that advice”). “[L]ike many other courts have found, ‘it would be unfair for a party asserting contentions [of good faith] to then rely on its privileges to deprive its adversary

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of access to material that might disprove or undermine the party's contentions.” *Arista Records, LLC v. Lime Group, LLC*, No. 06 Civ. 5936, 2011 WL 1642434, at \*2–3 (S.D.N.Y. Apr. 20, 2011) (citation omitted).

Mariano and Patriot took precisely the actions that well-established precedent holds to be a waiver: both took the position that they acted in good faith and without an improper motive when they refused to perform under the operative agreements, while simultaneously using privilege to block Hudson Bay from testing those claims. Specifically, both Patriot and Mariano claimed that they understood the operative agreements to state that Hudson Bay could not borrow Patriot stock before the disclosure of the transaction. (See Patriot National Inc.'s Answer to Amended Complaint and Counterclaims (“Patriot Answer”), Dkt. No. 122, ¶¶ 62, 67); (Steven M. Mariano's Amended Answer and Affirmative Defenses to the Amended Complaint and Amended Counterclaims (“Mariano Answer”), Dkt. No. 128, ¶¶ 9, 39-40.) That assertion alone puts their “understanding” of the agreement at issue, and is sufficient to constitute a waiver. See *MBIA Ins. Corp. v. Patriarch Partners VIII, LLC*, 2012 WL 2568972, at \*7 (S.D.N.Y. July 3, 2012) (finding waiver where plaintiff sought to block inquiry into certain communications despite articulating its “understanding” of contract in order to permit opposing party “a fair opportunity to assess and challenge [the] factual assertions at trial”).

Moreover, both Patriot and Mariano further injected their understanding of the agreements into the litigation by alleging that they were “induced” into entering the transaction. (Patriot Answer ¶¶ 69-74; see also Mariano Answer ¶¶ 88-94.) In particular, both Patriot and Mariano claimed that Hudson Bay made a false statement about “not employ[ing] manipulative short-selling strategies for self-gain,” which they believed to be prohibited under the transaction documents. (Patriot Answer ¶¶ 70-72; Mariano Answer ¶¶ 90-91.) Because such claims are sufficient to put their state of mind “at issue,” any attempt to invoke privilege over discussions about Patriot's performance under the agreements constitutes a waiver. See *Sax v. Sax*, 136 F.R.D. 542 (D. Mass. 1991) (finding defendant waived privilege with respect to its interpretation of contract when it brought counterclaims based on fraud and misrepresentation). Finally, Mariano claimed Patriot decided not to honor the Warrants pursuant to advice from counsel. Fairness dictates that a party cannot simultaneously put such matters at issue and at the same time invoke privilege to deny the opposing party the opportunity to test its claims. See *Vicinanzo v. Brunschwig & Fils, Inc.*, 739 F. Supp. 891, 894 (S.D.N.Y. 1990) (finding waiver and holding that where a party intends to rely on the advice of counsel as a defense, “that advice becomes a factual issue, and opposing counsel is entitled to [disclosure]”).

Further, there should be no doubt that Mariano had the ability to waive privilege on behalf of Patriot. Patriot itself designated Mariano as its Rule 30(b)(6) witness for a variety of noticed topics, including “[t]he reasons for Patriot's refusal to issue shares to the Investors pursuant to the Warrants.” (See June 7, 2017 email from B. Bondi to M. Nicholson, attached hereto as Ex. 4 (emphasis added).) It is well established that a company's corporate designee has the capacity to waive privilege on its behalf. See *Sanofi-Synthelabo v. Apotex Inc.*, 299 F. Supp. 2d 303, 308 (S.D.N.Y. 2004) (granting motion to compel and finding that [plaintiffs'] Rule 30(b)(6) witness waived company's privilege). Indeed, Mariano confirmed during his deposition that he was

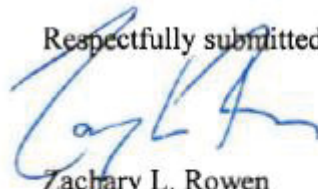
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“prepared to testify on behalf of Patriot National” on various items—including Patriot’s decision not to honor the Warrants. (See Mariano Tr. at 22:2-24.)

Even aside from his status as Patriot’s 30(b)(6) witness on issues related to Patriot decision not to honor the warrants, Mariano had the ability to waive the privilege on behalf of Patriot given his status at the time of his deposition as an officer, director, and owner of a majority of Patriot stock. (See Mariano Tr. at 35:2-3.) In *Commodity Futures Trading Comm’n v. Weintraub*, the United States Supreme Court confirmed that, “for solvent corporations, the power to waive the corporate attorney-client privilege rests with the corporation’s management and is normally exercised by its officers and directors.” 471 U.S. 343, 348 (1985). “As an inanimate entity, a corporation must act through agents.” *Id.*; cf. *U.S. v. Wells Fargo*, 2015 WL 3999074, at \*2-3 (S.D.N.Y. 2015) (stating that officers and directors can waive corporate privilege but holding that individual “several levels removed from Wells Fargo’s executive management” could not). The same principles apply here: at the time of his deposition, Mariano was not a mere employee; he was the CEO, President, Chairman, and owned a majority of Patriot’s stock. (See Patriot Answer ¶ 2.) In light of this, Mariano was undoubtedly able to effect a waiver on Patriot’s behalf.

Accordingly, Hudson Bay respectfully requests the Court to order Patriot to produce all documents responsive to Hudson Bay’s document requests, and permit its prior Board members to answer questions on this issue. In light of the 60-day discovery period, Hudson Bay further requests that the Court stay all discovery until this issue is resolved and extend all deadlines as appropriate.

Respectfully submitted,



Zachary L. Rowen  
of LATHAM & WATKINS LLP

cc: All counsel of record (via ECF)

# EXHIBIT 1

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**From:** Turner, Serrin (NY)  
**Sent:** Wednesday, June 5, 2019 8:35 PM  
**To:** Bondi, Bradley J.  
**Cc:** Rowen, Zachary (NY); Parvis, Elizabeth (NY); Linken, Peter J.; Hall, Jason M.  
**Subject:** RE: Mariano discovery

Brad –

Following up on the below, could you please advise:

- (1) whether Cahill will represent Pesch, Del Pizzo, and/or Corey and will accept service of the subpoenas we provided last week;
- (2) whether you need a subpoena for the documents requested below; and
- (3) whether the litigation trustee intends to assert any privilege objection in response to inquiry into the reason for Patriot's breach of the Warrants.

Given the 60-day discovery schedule set by the Court, we would appreciate a response as soon as possible.

Thanks,  
Serrin

---

**From:** Turner, Serrin (NY)  
**Sent:** Friday, May 31, 2019 2:31 PM  
**To:** Bondi, Bradley J. <[bbondi@cahill.com](mailto:bbondi@cahill.com)>  
**Cc:** Rowen, Zachary (NY) <[Zachary.Rowen@lw.com](mailto:Zachary.Rowen@lw.com)>; Parvis, Elizabeth (NY) <[Elizabeth.Parvis@lw.com](mailto:Elizabeth.Parvis@lw.com)>; Linken, Peter J. <[PLinken@cahill.com](mailto:PLinken@cahill.com)>; Hall, Jason M. <[JHall@Cahill.com](mailto:JHall@Cahill.com)>  
**Subject:** RE: Mariano discovery

Brad—

Attached please find deposition and document subpoenas for Christopher Pesch, Jack Del Pizzo, and Michael Corey. Please let us know if you will accept service on their behalf or whether we will need to arrange for personal service. If you know of other counsel representing them, please let us know, and we can direct the subpoenas to those attorneys instead.

We've used placeholder dates for the depositions but are happy to work with you (or their other counsel) on scheduling, as well as location.

Thanks,  
Serrin

---

**From:** Turner, Serrin (NY)  
**Sent:** Friday, May 31, 2019 12:16 PM  
**To:** 'Bondi, Bradley J.' <[bbondi@cahill.com](mailto:bbondi@cahill.com)>  
**Cc:** Rowen, Zachary (NY) <[Zachary.Rowen@lw.com](mailto:Zachary.Rowen@lw.com)>; Parvis, Elizabeth (NY) <[Elizabeth.Parvis@lw.com](mailto:Elizabeth.Parvis@lw.com)>; 'Linken, Peter J.' <[PLinken@cahill.com](mailto:PLinken@cahill.com)>; 'Hall, Jason M.' <[JHall@Cahill.com](mailto:JHall@Cahill.com)>  
**Subject:** RE: Mariano discovery

Brad –

With regard to documents, we request that Patriot produce:

- unredacted versions of the documents listed in Categories 1.4, 2, 3, 6, and 7 (with Bates stamps listed in Appendices 5, 6, 7, 10 and 11) of Patriot's Redaction Log (attached) regarding "Exercise Notices," "Regulatory Filings," "Draft Board Minutes," "Communications Concerning Regulatory Inquiries and Reviews" and the "FINRA Investigation"; and
- the documents withheld and listed in Categories 1.4, 2, 5, and 6 (with Bates stamps listed in Appendices 5, 6, 9, and 10) of Patriot's Privilege Log (also attached) regarding "Exercise Notices," "Regulatory Filings," "Communications Concerning Regulatory Inquiries and Reviews" and the "FINRA Investigation."

Based on the descriptions in the logs, these documents appear to fall squarely within the subject on which Judge Daniels re-opened discovery.

Please let us know if you need us to send you a formal subpoena for these documents, or whether this email request will suffice.

Thanks,  
Serrin

---

**From:** Turner, Serrin (NY)  
**Sent:** Thursday, May 30, 2019 11:39 AM  
**To:** 'Bondi, Bradley J.' <[bbondi@cahill.com](mailto:bbondi@cahill.com)>  
**Cc:** Rowen, Zachary (NY) <[Zachary.Rowen@lw.com](mailto:Zachary.Rowen@lw.com)>; Parvis, Elizabeth (NY) <[Elizabeth.Parvis@lw.com](mailto:Elizabeth.Parvis@lw.com)>; Linken, Peter J. <[PLinken@cahill.com](mailto:PLinken@cahill.com)>; Hall, Jason M. <[JHall@Cahill.com](mailto:JHall@Cahill.com)>  
**Subject:** RE: Mariano discovery

We currently intend to depose the individuals present at the Board meeting:

Mariano  
Chris Pesch  
Jack Del Pizzo  
Michael Corey  
Quentin Smith  
Austin Shanfelter

Again, the depositions would all be focused on the reason for the Board's decision not to honor the warrants.

Thanks,  
Serrin

---

**From:** Bondi, Bradley J. <[bbondi@cahill.com](mailto:bbondi@cahill.com)>  
**Sent:** Thursday, May 30, 2019 11:14 AM  
**To:** Turner, Serrin (NY) <[Serrin.Turner@lw.com](mailto:Serrin.Turner@lw.com)>  
**Cc:** Rowen, Zachary (NY) <[Zachary.Rowen@lw.com](mailto:Zachary.Rowen@lw.com)>; Parvis, Elizabeth (NY) <[Elizabeth.Parvis@lw.com](mailto:Elizabeth.Parvis@lw.com)>; Linken, Peter J. <[PLinken@cahill.com](mailto:PLinken@cahill.com)>; Hall, Jason M. <[JHall@Cahill.com](mailto:JHall@Cahill.com)>  
**Subject:** Re: Mariano discovery

Who do you want to depose?



**Bradley J. Bondi | Partner**

**Cahill Gordon & Reindel LLP**

1990 K Street, N.W., Suite 950, Washington, D.C. 20006

80 Pine Street, New York, NY 10005

t: +1.202.862.8910 | t: +1.212.701.3710 | f: +1.866.836.0501 | [bbondi@cahill.com](mailto:bbondi@cahill.com)

[www.cahill.com](http://www.cahill.com)

On May 30, 2019, at 7:59 AM, "[Serrin.Turner@lw.com](mailto:Serrin.Turner@lw.com)" <[Serrin.Turner@lw.com](mailto:Serrin.Turner@lw.com)> wrote:

Brad –

We will get the document requests to you shortly and are happy to meet and confer with respect to any issues you have with them. But for the depositions, we intend to inquire into the reason for the Board's decision not to honor the Warrants, which is precisely what the Court has ordered discovery to be reopened for. As you're aware, previously Patriot and Mariano claimed that the decision was based on attorney-client advice and blocked all questioning into the decision based on privilege. We do not want to schedule depositions only to have the same thing happen again. If you do plan to raise the same objection and instruct witnesses not to answer, then we need to know that as soon as possible so that we can promptly litigate the issue.

Thanks,

Serrin

---

**From:** Bondi, Bradley J. <[bbondi@cahill.com](mailto:bbondi@cahill.com)>

**Sent:** Thursday, May 30, 2019 10:45 AM

**To:** Turner, Serrin (NY) <[Serrin.Turner@lw.com](mailto:Serrin.Turner@lw.com)>

**Cc:** Rowen, Zachary (NY) <[Zachary.Rowen@lw.com](mailto:Zachary.Rowen@lw.com)>; Parvis, Elizabeth (NY) <[Elizabeth.Parvis@lw.com](mailto:Elizabeth.Parvis@lw.com)>; Linken, Peter J. <[PLinken@cahill.com](mailto:PLinken@cahill.com)>; Hall, Jason M. <[JHall@Cahill.com](mailto:JHall@Cahill.com)>

**Subject:** Re: Mariano discovery

Serrin,

We will inquire, but I have difficulty understanding why you would think we would agree to a blanket statement without seeing the requests and the specific documents in question. I would envision we would need to consider on a case-by-case basis, but I will discuss with our client and let you know.

Best regards,

Brad

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**Bradley J. Bondi | Partner**

**Cahill Gordon & Reindel LLP**

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[www.cahill.com](http://www.cahill.com)

On May 30, 2019, at 7:20 AM, "[Serrin.Turner@lw.com](mailto:Serrin.Turner@lw.com)" <[Serrin.Turner@lw.com](mailto:Serrin.Turner@lw.com)> wrote:

Brad,

As you probably have seen, earlier this week the Court reopened discovery with respect to Hudson Bay's pending tortious interference claim against Mariano, in order to enable Hudson Bay to obtain documents and



depose witnesses concerning the basis for Patriot's decision not to honor the Warrants. We intend to send out document and deposition subpoenas shortly.

We want to confirm that the Patriot litigation trustee does not intend to object to any documents or testimony sought on this issue on the basis of privilege. If it does intend to object, we will need to litigate that issue promptly.

Please let us know as soon as you are able.

Thanks,  
Serrin

**Serrin Turner**

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## EXHIBIT 2

**From:** Linken, Peter J. <PLinken@cahill.com>  
**Sent:** Wednesday, June 26, 2019 3:02 PM  
**To:** Rowen, Zachary (NY)  
**Cc:** Bondi, Bradley J.; Turner, Serrin (NY); Parvis, Elizabeth (NY)  
**Subject:** Re: Mariano discovery - subpoena duces tecum

Zach,

I conferred with the Trustee, and we are not authorized to accept service.

Best,  
Peter

Sent from my iPhone

---

**Peter J. Linken | Counsel**  
**Cahill Gordon & Reindel LLP**  
80 Pine Street, New York, NY 10005  
t: +1.212.701.3715 | f: +1.212.378.4137 | plinken@cahill.com  
www.cahill.com

On Jun 25, 2019, at 12:32 AM, "[Zachary.Rowen@lw.com](mailto:Zachary.Rowen@lw.com)" <[Zachary.Rowen@lw.com](mailto:Zachary.Rowen@lw.com)> wrote:

Peter,

Attached please find a subpoena for documents directed to Patriot National. This subpoena covers the same materials that we requested in our May 31, 2019 email to you (in which we also asked if you needed us to send a formal subpoena). Given that these requests have been outstanding since that time, the deadline provided for in the subpoena is one week. We assume you will accept service on behalf of the Litigation Trustee but please confirm in writing that you will do so.

Thanks,  
Zach

**Zachary L. Rowen**

**LATHAM & WATKINS LLP**  
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<http://www.lw.com>

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<Patriot Subpoena Duces Tecum.pdf.secure>

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## EXHIBIT 3

1  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 -----  
5 HUDSON BAY MASTER FUND LTD.,  
6 Plaintiff,

16 Civ. 02767

7 - against- (GBD) (RLE)

8 PATRIOT NATIONAL, INC. and  
9 STEVEN M. MARIANO,

10 Defendants.

11 -and-

12 AMERICAN STOCK TRANSFER & TRUST  
13 COMPANY, LLC as Transfer Agent to  
14 Defendant Patriot National, Inc.,

15 Nominal Defendant.

16 -----  
17 CVI INVESTMENTS INC.,

18 Plaintiff,

16 Civ. 2787

19 -against- (GBD) (RLE)

20 PATRIOT NATIONAL, INC.,

21 Defendant.

22 -----  
23 CONFIDENTIAL  
24 VIDEOTAPED DEPOSITION OF  
25 STEVEN MARIANO  
June 13, 2017  
9:03 a.m.

1 CONFIDENTIAL - S. MARIANO

2 Q. Over time, did Patriot National  
3 gain clients other than GIC?

4 A. It did.

5 Q. In or about 2014, moving ahead,  
6 was GIC the majority of Patriot National's  
7 business?

8 A. It was.

9 Q. I think we have seen the number  
10 60 percent. Does that ring right to you?

11 A. That sounds pretty close.

12 (Brief interruption.)

13 Q. Can you tell me who some of the  
14 other clients were of Patriot National  
15 besides GIC?

16 A. Sure. Zurich Insurance Company,  
17 Scottsdale Insurance Company, Ullico  
18 Casualty Insurance Company.

19 Who else? American Insurance  
20 Group, AIG.

21 Q. In the 2015 time period, do you  
22 know how much in revenue GIC provided to  
23 Patriot National?

24 A. In 2015?

25 Q. 2015.



1 CONFIDENTIAL - S. MARIANO

2 A. I believe it to be somewhere  
3 around 50 to 60 percent.

4 Q. Do you have a number?

5 A. I don't have a number off the  
6 top of my head, no.

7 Q. If we looked at the total  
8 revenues of Patriot National and applied  
9 the number 50 to 60 percent, we would come  
10 up with the numbers?

11 A. Yes. I think it is in the  
12 public documents.

13 Q. That is fine.

14 (So marked for identification as  
15 Mariano Exhibit 1.)

16 Q. Mr. Mariano, I have placed in  
17 front of you what is entitled, "Notice of  
18 30(b)(6) deposition of Patriot National  
19 Inc. by Plaintiffs Hudson Bay Master Fund  
20 Limited and CVI Investments, Inc. I will  
21 ask you if you have seen that before.

22 A. Yes.

23 Q. Did you see it in connection  
24 with preparing for this deposition?

25 A. Yes.

1 CONFIDENTIAL - S. MARIANO

2 Q. Your counsel has advised us that  
3 you are prepared to testify on behalf of  
4 Patriot National on the items beginning on  
5 page 6 that are marked number 1, number 5,  
6 number 6, number 7, number 10, number  
7 11 --

8 A. Okay if I write?

9 Q. Absolutely.

10 A. 1?

11 Q. I will go back over it again.  
12 1, 5, 6, 7, 10, 11, 12 and 13. Is that  
13 accurate?

14 A. Let me read through them.

15 Q. Sure. Let me rephrase it.

16 As I understand it, you are here  
17 to testify not only on behalf of yourself,  
18 but on behalf of Patriot National on those  
19 subjects?

20 A. Let me read and make sure that  
21 is accurate.

22 Q. Fine.

23 (Pause.)

24 A. Yes, that's accurate.

25 Q. Did you do anything to prepare

1                   CONFIDENTIAL - S. MARIANO

2           to testify on those subjects?

3                   MR. BONDI: I caution the  
4           witness, you can say yes, but I don't  
5           want you to get into any specific  
6           preparation that you did with counsel.

7           Q.       Mr. Mariano, so you  
8           understand -- and counsel on all sides  
9           have been pretty courteous about this --  
10          if any of my questions intrude on what  
11          your counsel perceives to be the  
12          attorney-client privilege, I am sure they  
13          will say so and then give you instructions  
14          on how to answer.

15          A.       Okay.

16          Q.       The question now is a yes or no  
17          question. Did you do anything to prepare  
18          in order to answer the questions that  
19          relate to the subjects --

20          A.       Yes, I was here yesterday.

21          Q.       Can you tell me what you did?

22                   MR. BONDI: Mr. Mariano, I just  
23          caution you, I don't want you to  
24          reveal any discussions you had with  
25          counsel, but you can say generally

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2 that you met with counsel.

3 A. Yes. I met with counsel  
4 yesterday.

5 Q. Other than meeting with counsel,  
6 did you do anything else to prepare to  
7 answer these subjects?

8 A. No.

9 Q. In preparation for this  
10 deposition, have you met with counsel?

11 A. Yes.

12 Q. How many times?

13 A. Twice.

14 Q. Was the most recent time  
15 yesterday?

16 A. Yes, sir.

17 Q. What was the prior time?

18 A. A week or two back.

19 Q. When you say you met with  
20 counsel, do you mean the Cahill firm? Do  
21 you mean Mr. Wilson? Do you mean somebody  
22 else?

23 A. All counsel.

24 Q. So Mr. Wilson was present?

25 A. Yes, sir.

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2 A. I am.

3 Q. Patriot National declined to  
4 honor those; isn't that right?

5 A. That is correct.

6 Q. Can you tell me why?

7 MR. BONDI: Object to the form.  
8 Calls for information protected by the  
9 attorney-client privilege.

10 Mr. Mariano, I do not want you  
11 to answer if it involves -- if that  
12 decision was in any way shaped on  
13 advice of counsel.

14 A. I can't answer that question,  
15 per advice of counsel.

16 Q. Let's probe that for just a  
17 minute because I think it's fairly  
18 important.

19 Prior to consulting counsel, had  
20 you determined whether or not you were  
21 going to honor any exercise of warrants by  
22 CVII?

23 A. The conversation of whether I  
24 was going to, or the company, or both?

25 Q. The company. Let's start with

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2       that.

3           A.       The company had several  
4       conversations with its attorneys, the  
5       board of directors, and discussed it.

6           Q.       What I am asking is prior to  
7       talking to lawyers.

8           A.       No.

9                   MR. BONDI:   Mr. Mariano --  
10       sorry. He answered. I was trying to  
11       help.

12          A.       No.

13          Q.       Is it your testimony that the  
14       decision to not honor the warrants is  
15       based on legal advice?

16                 MR. BONDI:   Mr. Mariano, if you  
17       have an independent understanding of  
18       the decision -- strike that.

19                 If there was a decision that was  
20       made that was outside the advice of  
21       counsel, you can answer that. But I  
22       don't want you to answer that question  
23       if in answering that it implicates  
24       that counsel was -- the advice of  
25       counsel.

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2 Q. All I want to know is a yes or  
3 no answer. That is exactly what you are  
4 trying to get at, I think.

5 A. Repeat the question.

6 Q. What I would like to know,  
7 Mr. Mariano, is, is there any basis for  
8 your decision other than -- not to honor  
9 the warrants -- other than the advice of  
10 counsel?

11 MR. WILSON: "Your" being  
12 Patriot National?

13 MR. GOLDBERGER: Patriot  
14 National.

15 A. Other than the advice of  
16 counsel, no.

17 Q. Mr. Mariano, is there any basis  
18 for your decision personally not to honor  
19 the warrants other than the advice of  
20 counsel?

21 A. No.

22 Q. So the record is absolutely  
23 clear, so we have it on the record -- let  
24 me ask counsel.

25 MR. GOLDBERGER: If I ask him



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2 what the advice of counsel was, I  
3 assume you will instruct him not to  
4 answer?

5 MR. BONDI: That's correct.

6 MR. GOLDBERGER: John?

7 MR. WILSON: That's correct.

8 MR. GOLDBERGER: I don't want to  
9 waste a lot of time doing that.

10 Q. And you would follow that  
11 instruction. Is that right?

12 A. Most likely.

13 Q. Mr. Mariano, would you look at  
14 Exhibit 1 for a minute? I just want to  
15 direct your attention to topic number 13  
16 on page 8, which reads, "The reasons for  
17 Patriot's refusal to issue shares to  
18 investors pursuant to the warrants."

19 Do I understand your testimony  
20 to be that in response to that question  
21 the answer is "advice of counsel"?

22 MR. BONDI: I will instruct the  
23 witness not to answer.

24 Mr. Goldberger, we have served  
25 objections with respect to number 13.

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2           Mr. Mariano is unable to answer that  
3           question without revealing discussions  
4           with counsel. You have got all of the  
5           testimony that we are offering on  
6           number 13.

7                   MR. GOLDBERGER: Okay. Fair  
8           enough. I just wanted to make that  
9           record, Brad. Thank you.

10                   (So marked for identification as  
11           Mariano Exhibit 11.)

12           Q.       Mr. Mariano, I am showing you  
13           documents that bear the Bates numbers  
14           PNCGR 00013822 through 23. They appear to  
15           be a series of emails. My first question  
16           is going to be, have you seen these  
17           before?

18           A.       No.

19           Q.       Do you have any reason to  
20           believe that the email that appears to be  
21           from Mr. Pesch to you was not received by  
22           you?

23           A.       No reason to believe that, no.

24           Q.       Do you see Mr. Pesch writes to  
25           you, on December 10th, at 8:37 p.m., among

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2 MR. GOLDBERGER: That is fair on  
3 privilege.

4 THE VIDEOGRAPHER: Going off the  
5 record at approximately 11:15.

6 (Recess.)

7 THE VIDEOGRAPHER: The time now  
8 is approximately 11:18. We are back  
9 on the record.

10 Q. Mr. Mariano, your counsel  
11 suggested that I ask you what was conveyed  
12 in the conversation that made you think  
13 you had little negotiating room.

14 A. Yes.

15 Q. And what was it?

16 A. This was conversations that were  
17 going on between me and Simpson, and so  
18 what I was stating here was based upon my  
19 conversations with the people at Simpson.

20 Q. I see. Who at Simpson, by the  
21 way?

22 A. There were several people. Gary  
23 Horowitz, Lesley Peng and two or three  
24 other people that were involved there.

25 Q. Did you talk to one or the other

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2 principally?

3 A. No. All four or five of them.

4 Q. During this time frame, were you  
5 talking to them on a fairly regular basis?

6 A. No. I wasn't, no.

7 Q. How frequently would you say you  
8 were talking to Simpson?

9 A. During this period,  
10 December 10th to December 13th, probably  
11 two or three times.

12 Q. Did you ever ask anyone to fully  
13 explain the terms of the Series B  
14 warrants? And I am now not asking you  
15 what was discussed. I am just asking if  
16 you had the discussion.

17 A. Was there a discussion --

18 Q. Before December 13th that you  
19 were party to regarding what the Series B  
20 warrants meant.

21 A. No. Not specifically, no.

22 Q. How about generally?

23 A. Generally, yes.

24 Q. With whom?

25 A. With counsel.

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2 Q. Which counsel?

3 A. Simpson.

4 MR. GOLDBERGER: Again, I assume  
5 if I ask what the conversation was,  
6 you will direct not to answer.  
7 Correct?

8 MR. BONDI: Correct.

9 MR. WILSON: That is correct.

10 Q. And you will follow that  
11 instruction?

12 A. Yes, sir.

13 Q. Did you have any discussion in  
14 that time frame whether shares of your  
15 stock would be borrowed -- strike that.

16 Did you have any discussion in  
17 that time frame with anyone about whether  
18 shares of Patriot National could be  
19 borrowed in the time frame of December 1st  
20 through December 13th?

21 A. I don't recall that  
22 conversation; no.

23 Q. Did you have any discussion with  
24 anyone between December 1st and  
25 December 13th about whether shares of

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2 Patriot National stock could be sold short  
3 by the investors after the deal closed?

4 MR. BONDI: Mr. Goldberger, if  
5 you are going to sort of piecemeal go  
6 through, you are essentially getting  
7 to the advice itself.

8 MR. GOLDBERGER: I am not, Brad.

9 MR. BONDI: If you say, "If you  
10 had a discussion about this," "Have  
11 you had discussion about this" -- I  
12 was waiting to see where you are going  
13 with this, but I just want to make the  
14 record clear that I am going to  
15 intervene here if it continues to be  
16 piecemeal of "Did you have a  
17 discussion about this? Did you have a  
18 discussion about this?" That  
19 essentially is revealing the mental  
20 impressions of counsel and the advice  
21 that was given by counsel to  
22 Mr. Mariano.

23 I don't know where you are going  
24 with this, and I just wanted to  
25 caution on this particular line.

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2 MR. GOLDBERGER: Brad, I am not  
3 asking him to tell me what he said. I  
4 am fully entitled to know whether he  
5 had discussions about a subject,  
6 period. That is not getting to advice  
7 of counsel.

8 There are key issues in this  
9 case. I am going to ask him whether  
10 or not he had discussions about them.  
11 If you want to instruct him not to  
12 answer, that is your privilege. We  
13 will fight it out later. I will not  
14 clutter the record with the debate.  
15 Let's keep going. If you want to  
16 instruct him, instruct him.

17 A. Can you repeat the question?

18 Q. Sure. Did you have any  
19 discussion with anyone between  
20 December 1st and December 13th about  
21 whether shares of Patriot National stock  
22 could be sold short by the investors after  
23 the deal closed?

24 A. Yes.

25 Q. With whom?



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2 A. With counsel. Simpson.

3 Q. Do you know who at Simpson?

4 A. Several people along the line.

5 Q. Again, what was that discussion?

6 MR. WILSON: Objection.

7 Instruct him not to answer.

8 Q. I assume you will follow that  
9 instruction?

10 A. Yes, sir.

11 Q. Mr. Mariano, did you have any  
12 discussion with J.P. Morgan about the  
13 subject of whether shares of Patriot  
14 National stock could be sold short by  
15 investors after the deal closed?

16 A. After the deal closed?

17 Q. My question is whether the  
18 discussion took place between December 1st  
19 and December 13th about whether shares  
20 could be sold after the deal closed.

21 A. I don't recall any conversation  
22 specifically with J.P. Morgan, no.

23 Q. Do you recall any generally?

24 A. No.

25 Q. Did you have any discussions

1 CONFIDENTIAL - S. MARIANO

2 with J.P. Morgan about whether shares of  
3 stock could be borrowed by the investors  
4 between December 1st and December 13th in  
5 the time period December 1st through  
6 December 13th?

7 A. Not that I recall at all.

8 Q. Other than your counsel, did you  
9 have any discussions about borrowing or  
10 shorting stock with respect to the  
11 December 13th agreement before it was  
12 signed?

13 A. I don't believe so.

14 MR. GOLDBERGER: Let's take a  
15 five-minute break.

16 THE VIDEOGRAPHER: The time now  
17 is approximately 11:25. We are going  
18 off the record. This is the end of  
19 media 2.

20 (Recess.)

21 THE VIDEOGRAPHER: The time now  
22 is approximately 11:45. We are back  
23 on the record. This is the beginning  
24 of media 3.

25 Q. Mr. Mariano, once you learned

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2 that the transaction was not going to be  
3 exactly as you had first heard it -- that  
4 is, that there was not going to be just a  
5 sale of shares at a small discount but  
6 that there would be added benefits to the  
7 investors like warrants, did that cause  
8 you any concern?

9 MR. BONDI: Object to the form.

10 A. Not specifically.

11 Q. Generally?

12 A. There was -- yes, there is  
13 always concern when there is warrants.  
14 There is always concern about what they  
15 look like and how they appear. But in  
16 general, yes, concern. Specifically, no.

17 Q. What were your general concerns?

18 A. My general concern was we had  
19 really never done, or as a public company,  
20 issued warrants.

21 Q. Did you do anything to alleviate  
22 your concerns?

23 A. Explain what you are asking.

24 Q. You said you had general  
25 concerns about the warrants and you said,

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2 of which you were a part, with Citadel,  
3 concerning any impropriety done prior to  
4 deal close, regardless of who else was  
5 present?

6 A. No. There was speculation from  
7 Citadel --

8 MR. BONDI: Mr. Mariano, listen  
9 to the question. I don't think that  
10 is what he asked.

11 THE WITNESS: I am sorry.

12 Q. We'll get there in a minute.  
13 The beginning of the question is, did you  
14 have any conversations with Citadel in  
15 which they expressed a view as to whether  
16 there was any impropriety done prior to  
17 deal close?

18 A. Yes.

19 Q. With whom did you have that  
20 conversation?

21 A. Rory Murphy.

22 Q. What did he say?

23 A. He thought that there was  
24 impropriety somewhere done for the stock  
25 to go down that low.

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2 Q. Did he say what the impropriety  
3 was?

4 A. No.

5 Q. Do you know if Citadel's legal  
6 counsel spoke to Simpson Thacher about the  
7 subject of any impropriety?

8 A. I do not know. I know they  
9 talked, but I do not know that the -- what  
10 they conversed about.

11 Q. But you do believe that Simpson  
12 and Citadel talked?

13 A. I believe so.

14 Q. Citadel's lawyer, that is?

15 A. Citadel's lawyers. Yes.

16 Q. How do you know that?

17 A. Just based upon the  
18 conversations that occurred between Pesch,  
19 Simpson and what I understand to be Rory  
20 and his legal group.

21 Q. I understand.

22 A. I was not on the calls, so I  
23 cannot express whether they talked  
24 about -- whatever they talked about. I  
25 have no idea.

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2 Q. That was my next question. Do  
3 you know what that conversation consisted  
4 of?

5 A. No.

6 Q. Then you write on the next page,  
7 "Short sale or holding of shares to short  
8 before the deal closed was barred in the  
9 contract." Do you see that?

10 A. What page is that?

11 Q. Very top, 7947.

12 A. Yes.

13 Q. That is you talking to  
14 Mr. Murphy. Is that correct?

15 A. I believe so.

16 Q. What is your basis for that  
17 statement?

18 A. Legal conversations with our  
19 attorneys.

20 Q. Let's start with something  
21 simple. You didn't make that statement  
22 based on reading the contract yourself,  
23 did you?

24 A. No.

25 Q. What did your attorneys tell you

1 CONFIDENTIAL - S. MARIANO

2 about that subject?

3 MR. WILSON: Objection.

4 MR. BONDI: Objection. That  
5 calls for attorney-client privileged  
6 information. The statement that  
7 Mr. Mariano is making in an email is a  
8 position that has also been asserted  
9 in this litigation. The fact of  
10 asserting a position does not mean  
11 that the substance of the legal advice  
12 behind that position is discoverable.

13 So, the advice that Mr. Mariano  
14 would have received from counsel is  
15 privileged information. The position  
16 that he is taking here is not  
17 privileged. We produced it in an  
18 email. But beyond the support for the  
19 discussion, the legal advice that led  
20 to this position here is going to be  
21 privileged.

22 MR. GOLDBERGER: For the  
23 record -- and I am not going to get in  
24 an argument with you because I assume  
25 you are going to instruct him not to



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2           answer. But for the record, when  
3           someone consults counsel for the  
4           purpose of disclosing to an outside  
5           party a position, that conversation is  
6           not intended, nor is it confidential  
7           and, therefore, there is no  
8           attorney-client privilege.

9                   We are not going to resolve this  
10          debate here. I just wanted you to  
11          understand my position.

12                  MR. BONDI: And we disagree with  
13          that position.

14                  MR. GOLDBERGER: That is fine.

15                  MR. BONDI: We agree with you  
16          that we won't be able to resolve it  
17          here, but disagree with the legal  
18          position.

19          Q. I assume you will follow your  
20          counsel's instruction?

21          A. Yes. The only thing I would  
22          say, if you look at the second statement,  
23          "Legal chat should happen before I land."  
24          That means legal counsel should be talking  
25          to each other, not me, not Rory, should be

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2 talking to each other as I mentioned

3 earlier. Other than that...

4 Q. Then you say, "Decision will not  
5 be made until we have evaluated everything  
6 to of the fullest extent." Do you see?

7 A. Yes.

8 Q. What did that mean?

9 A. Don't know.

10 That could have meant a lot of  
11 things at that moment.

12 Q. Then you write, "Love to get  
13 your thoughts on what you would like to  
14 see happen regarding deal terms."

15 Do you see that?

16 A. Yes.

17 Q. Do you know what that means?

18 A. Yes.

19 Q. What does it mean?

20 A. It means that -- I believe this  
21 was between the 17th and 20th -- 21st or  
22 somewhere in that range.

23 Q. I can tell you it is the 21st.

24 A. So the conversation at that  
25 point was, if we were not able to rescind

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2       the whole transaction we were doing  
3       something that we could to get all the  
4       other investors out of this transaction  
5       because we had no idea what had just  
6       happened to us. So asking one of our  
7       major investors what did they want to see  
8       happen was basically what we were looking  
9       at.

10           Q.       Then you write, "I believe you  
11       guys are still over the wall at this point  
12       and this communication is fine."

13                   Then you have a question,  
14       "Chris?"

15           A.       Questioning legal counsel on  
16       whether that conversation was true or  
17       false.

18           Q.       What did you mean by "you guys  
19       are still over the wall"?

20           A.       At that time, believing that  
21       Citadel had been over the wall and had  
22       signed an NDA.

23           Q.       That is what I was going to ask.  
24       Do you mean by over the wall that they had  
25       signed an NDA?

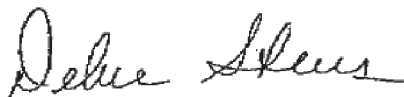
CERTIFICATION

I, DEBRA STEVENS, a Notary Public for  
and within the State of New York, do  
hereby certify:

That the witness whose testimony as  
herein set forth, was duly sworn by me;  
and that the within transcript is a true  
record of the testimony given by said  
witness.

I further certify that I am not  
related to any of the parties to this  
action by blood or marriage, and that I am  
in no way interested in the outcome of  
this matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 14th day of June, 2017.



-----  
DEBRA STEVENS

\* \* \*

# EXHIBIT 4

**From:** Bondi, Bradley J. <bbondi@cahill.com>  
**Sent:** Wednesday, June 7, 2017 7:53 AM  
**To:** Nicholson, Michelle (DC)  
**Cc:** Mintz, Adam S.; KrabillL@ballardspahr.com; Clark, Christopher (NY);  
PeerceM@ballardspahr.com; GoldbergerM@ballardspahr.com; Calabrese, Corey (NY);  
dberger@abv.com; Owen, David; Kavalier, Thomas J.; Torres, Ivan; Weinstein, Eric;  
jwilson@broadandcassel.com; ekolmansberger@broadandcassel.com;  
mgomberg@broadandcassel.com; WMaher@WMD-LAW.com;  
gmahfood@broadandcassel.com; ABialek@WMD-LAW.COM; Turner, Serrin (NY);  
GershelB@ballardspahr.com; KunzJ@ballardspahr.com; KatsiffT@ballardspahr.com;  
Wheatley, Michael; Hall, Jason M.; Linken, Peter J.  
**Subject:** Re: Hudson Bay Master Fund Ltd. v. Patriot National, Inc. et al., No. 16-cv-2767  
(S.D.N.Y.); CVI Investments, Inc. v. Patriot National, Inc., No. 1:16-cv-2787 (S.D.N.Y.)

Counsel,

Please be advised that, pursuant to Hudson Bay Master Fund Ltd. and CVI Investments, Inc.'s Notice of 30(b)(6) Deposition of Patriot National, Inc ("Patriot National"), and consistent with Patriot National's objections to that notice, the following individuals will appear on behalf of Patriot National as to the topics indicated below:

- Steven M. Mariano (June 13, as scheduled): topics 1, 5, 6, 7, 10, 11, 12, and 13.
- Gex F. Richardson: topics 2, 3, 4, 8, 9, 15.

We propose [June 16 at 8:00 am](#) for the deposition of Mr. Richardson.

With respect to topic 14, Patriot National adopts the relevant testimony provided by Christopher Pesch in this matter as its Rule 30(b)(6) testimony on that topic.

Sincerely,  
Brad Bondi

---

**Bradley J. Bondi | Partner**  
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**CAHILL**

On Jun 6, 2017, at 1:03 PM, "[Michelle.Nicholson@lw.com](mailto:Michelle.Nicholson@lw.com)" <[Michelle.Nicholson@lw.com](mailto:Michelle.Nicholson@lw.com)> wrote:

Counsel-

We have been in contact with counsel for Mr. Shanfelter. He is only available for deposition on June 14<sup>th</sup> of next week in Ft. Myers, FL. The deposition will be held at Veritext's Offices (2402 Bay Street Suite 106, Fort Myers, FL). Start time will be 9:30. Please let me know if you have any other questions or if this presents any issues.

Thanks,  
Michelle

---

**From:** Nicholson, Michelle (NY)  
**Sent:** Tuesday, May 30, 2017 1:57 PM  
**To:** 'Mintz, Adam S.'; 'Krabill, Laura E.'  
**Cc:** Clark, Christopher (NY); 'Peerce, Marjorie'; 'Goldberger, M. Norman'; Calabrese, Corey (NY); [dberger@abv.com](mailto:dberger@abv.com); 'Bondi, Bradley J.'; 'Owen, David'; 'Kavaler, Thomas J.'; 'Torres, Ivan'; 'Weinstein, Eric'; [jwilson@broadandcassel.com](mailto:jwilson@broadandcassel.com); [ekolmansberger@broadandcassel.com](mailto:ekolmansberger@broadandcassel.com); [mgomberg@broadandcassel.com](mailto:mgomberg@broadandcassel.com); [WMaher@WMD-LAW.com](mailto:WMaher@WMD-LAW.com); [gmafood@broadandcassel.com](mailto:gmafood@broadandcassel.com); [ABialek@WMD-LAW.COM](mailto:ABialek@WMD-LAW.COM); Turner, Serrin (NY); 'Gershel, Bradley'; 'Kunz, Joanna H.'; [jwilson@broadandcassel.com](mailto:jwilson@broadandcassel.com); 'Katsiff, Timothy D'  
**Subject:** RE: Hudson Bay Master Fund Ltd. v. Patriot National, Inc. et al., No. 16-cv-2767 (S.D.N.Y.); CVI Investments, Inc. v. Patriot National, Inc., No. 1:16-cv-2787 (S.D.N.Y.)  
Counsel-  
We've been in communication with counsel for Mr. Smith. He is only available for deposition on June 14<sup>th</sup> and 15<sup>th</sup>. Our schedules only work for the 15<sup>th</sup>. As such, we've scheduled his deposition for June 15<sup>th</sup> in Ballard Spahr's Phoenix offices (1 East Washington Street, Suite 2300, Phoenix, AZ 85004-2555). Although we don't believe it will be possible to reschedule, please let us know if this raises any issues.  
Thanks,  
Michelle

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**From:** Nicholson, Michelle (NY)  
**Sent:** Tuesday, May 09, 2017 2:56 PM  
**To:** 'Mintz, Adam S.'; 'Krabill, Laura E.'  
**Cc:** Clark, Christopher (NY); Friedman, Leah (NY); 'Peerce, Marjorie'; 'Goldberger, M. Norman'; Calabrese, Corey (NY); [dberger@abv.com](mailto:dberger@abv.com); 'Bondi, Bradley J.'; 'Owen, David'; 'Kavaler, Thomas J.'; 'Torres, Ivan'; 'Weinstein, Eric'; [jwilson@broadandcassel.com](mailto:jwilson@broadandcassel.com); [ekolmansberger@broadandcassel.com](mailto:ekolmansberger@broadandcassel.com); [mgomberg@broadandcassel.com](mailto:mgomberg@broadandcassel.com); [WMaher@WMD-LAW.com](mailto:WMaher@WMD-LAW.com); [gmafood@broadandcassel.com](mailto:gmafood@broadandcassel.com); [ABialek@WMD-LAW.COM](mailto:ABialek@WMD-LAW.COM); Turner, Serrin (NY); 'Gershel, Bradley'; 'Kunz, Joanna H.'  
**Subject:** RE: Hudson Bay Master Fund Ltd. v. Patriot National, Inc. et al., No. 16-cv-2767 (S.D.N.Y.); CVI Investments, Inc. v. Patriot National, Inc., No. 1:16-cv-2787 (S.D.N.Y.)  
Counsel-  
Please find attached notices of amended subpoenas for the production of documents and for testimony for Austin Shanfelter and Quentin Smith.  
Thanks,  
Michelle

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**From:** Nicholson, Michelle (NY)  
**Sent:** Wednesday, April 12, 2017 4:47 PM  
**To:** 'Mintz, Adam S.'; 'Krabill, Laura E.'  
**Cc:** Clark, Christopher (NY); Friedman, Leah (NY); Peerce, Marjorie; Goldberger, M. Norman; Calabrese, Corey (NY); [dberger@abv.com](mailto:dberger@abv.com); Bondi, Bradley J.; Owen, David; Kavaler, Thomas J.; Torres, Ivan; Weinstein, Eric; [jwilson@broadandcassel.com](mailto:jwilson@broadandcassel.com); [ekolmansberger@broadandcassel.com](mailto:ekolmansberger@broadandcassel.com); [mgomberg@broadandcassel.com](mailto:mgomberg@broadandcassel.com); [WMaher@WMD-LAW.com](mailto:WMaher@WMD-LAW.com); [gmafood@broadandcassel.com](mailto:gmafood@broadandcassel.com); [ABialek@WMD-LAW.COM](mailto:ABialek@WMD-LAW.COM); Turner, Serrin (NY); Gershel, Bradley; Kunz, Joanna H.  
**Subject:** RE: Hudson Bay Master Fund Ltd. v. Patriot National, Inc. et al., No. 16-cv-2767 (S.D.N.Y.); CVI Investments, Inc. v. Patriot National, Inc., No. 1:16-cv-2787 (S.D.N.Y.)  
Counsel-  
Please find attached a notice of subpoena for Citadel LLC.  
Regarding deposition dates, we'd like to propose the following:

- Steven M. Mariano: May 2<sup>nd</sup>
- Yoav Roth/30(b)(6): May 4<sup>th</sup> or 5<sup>th</sup>
- For Pizzo, Pesch, and Walsh, can you please confirm whether these individuals are represented by counsel and, if so, by whom?

We look forward to proposed dates for the depositions of:

- Cindy Campbell
- Elizabeth Hensen

- David Quigley

Thanks,  
Michelle

---

**From:** Mintz, Adam S. [<mailto:AMintz@cahill.com>]

**Sent:** Tuesday, April 11, 2017 8:04 PM

**To:** 'Krabill, Laura E.'

**Cc:** Clark, Christopher (NY); Friedman, Leah (NY); Pearce, Marjorie; Goldberger, M. Norman; Calabrese, Corey (NY); [dberger@abv.com](mailto:dberger@abv.com); Bondi, Bradley J.; Owen, David; Kavalier, Thomas J.; Torres, Ivan; Weinstein, Eric; [jwilson@broadandcassel.com](mailto:jwilson@broadandcassel.com); [ekolmansberger@broadandcassel.com](mailto:ekolmansberger@broadandcassel.com); [mgomberg@broadandcassel.com](mailto:mgomberg@broadandcassel.com); [WMaher@WMD-LAW.com](mailto:WMaher@WMD-LAW.com); [gmahfood@broadandcassel.com](mailto:gmahfood@broadandcassel.com); [ABialek@WMD-LAW.COM](mailto:ABialek@WMD-LAW.COM); Nicholson, Michelle (NY); Turner, Serrin (NY); Gershel, Bradley; Kunz, Joanna H.

**Subject:** RE: Hudson Bay Master Fund Ltd. v. Patriot National, Inc. et al., No. 16-cv-2767 (S.D.N.Y.); CVI Investments, Inc. v. Patriot National, Inc., No. 1:16-cv-2787 (S.D.N.Y.)

Laura and Michelle,

Thank you for getting back to us. We can confirm the following:

- Victor Simonte (HB) – April 25
- George Antonopolous (HB) – May 1
- Andrew Singer (CVII) – May 4
- Michael Spolan (CVII) – May 5
- Joel Gutteridge (HB) – May 11
- Tom Shields (Patriot) – May 16
- Brad Alles (CVII) – May 23
- Susan Sproule (CVII) – May 24

As to Mr. Pizzo and Mr. Pesch, they have limited availability as they no longer work for Patriot National and we would appreciate your flexibility. Can you please reconsider whether the offered dates work? For example, you appear to be otherwise available on April 26 for Mr. Roth's deposition. We will work on dates for Mr. Mariano and Mr. Walsh. We will discuss with our client the notices directed to Cindy Campbell, Elizabeth Hensen, and David Quigley.

We are awaiting additional dates from Plaintiffs for:

- Yoav Roth/HB 30(b)(6)
- Martin Kobinger/CVI 30(b)(6)

Adam

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**From:** Krabill, Laura E. [<mailto:KrabillL@ballardspahr.com>]

**Sent:** Tuesday, April 11, 2017 2:54 PM

**To:** Mintz, Adam S.

**Cc:** [Chris.Clark@lw.com](mailto:Chris.Clark@lw.com); [Leah.Friedman@lw.com](mailto:Leah.Friedman@lw.com); Pearce, Marjorie; Goldberger, M. Norman; [Corey.Calabrese@lw.com](mailto:Corey.Calabrese@lw.com); [dberger@abv.com](mailto:dberger@abv.com); Bondi, Bradley J.; Owen, David; Kavalier, Thomas J.; Torres, Ivan; Weinstein, Eric; [jwilson@broadandcassel.com](mailto:jwilson@broadandcassel.com); [ekolmansberger@broadandcassel.com](mailto:ekolmansberger@broadandcassel.com); [mgomberg@broadandcassel.com](mailto:mgomberg@broadandcassel.com); [WMaher@WMD-LAW.com](mailto:WMaher@WMD-LAW.com); [gmahfood@broadandcassel.com](mailto:gmahfood@broadandcassel.com); [ABialek@WMD-LAW.COM](mailto:ABialek@WMD-LAW.COM); [Michelle.Nicholson@lw.com](mailto:Michelle.Nicholson@lw.com); [Serrin.Turner@lw.com](mailto:Serrin.Turner@lw.com); Gershel, Bradley; Kunz, Joanna H.

**Subject:** RE: Hudson Bay Master Fund Ltd. v. Patriot National, Inc. et al., No. 16-cv-2767 (S.D.N.Y.); CVI Investments, Inc. v. Patriot National, Inc., No. 1:16-cv-2787 (S.D.N.Y.)

Adam:

Per your email below, CVII can confirm that Messrs. Spolan and Singer are available on May 4 and 5 as you proposed. Mr. Alles is available on May 23, during the window you proposed. Ms. Sproule is not available on the dates you requested. She is available on May 23 or 24<sup>th</sup>. We are still trying to determine Mr. Kobinger's availability and will advise you shortly. Since Mr. Kobinger is CVII's 30(b)(6) designee and will appear only once, whatever date we arrange for his deposition will serve as CVII's 30(b)(6) deposition too. Please let me know if you have any questions or would like to discuss.

Laura

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**From:** Mintz, Adam S. [<mailto:AMintz@cahill.com>]

**Sent:** Thursday, April 06, 2017 9:34 PM



**To:** Turner, Serrin (NY); Clark, Christopher (NY); Nicholson, Michelle (NY); Friedman, Leah (NY); [KrabillL@ballardspahr.com](mailto:KrabillL@ballardspahr.com); [PeerceM@ballardspahr.com](mailto:PeerceM@ballardspahr.com); [GoldbergerM@ballardspahr.com](mailto:GoldbergerM@ballardspahr.com); Calabrese, Corey (NY); ['dberger@abv.com'](mailto:dberger@abv.com)

**Cc:** Bondi, Bradley J.; Owen, David; Kavalier, Thomas J.; Torres, Ivan; Weinstein, Eric; [jwilson@broadandcassel.com](mailto:jwilson@broadandcassel.com); [ekolmansberger@broadandcassel.com](mailto:ekolmansberger@broadandcassel.com); [mgomberg@broadandcassel.com](mailto:mgomberg@broadandcassel.com); [WMaher@WMD-LAW.com](mailto:WMaher@WMD-LAW.com); [gmahfood@broadandcassel.com](mailto:gmahfood@broadandcassel.com); [ABialek@WMD-LAW.COM](mailto:ABialek@WMD-LAW.COM)

**Subject:** RE: Hudson Bay Master Fund Ltd. v. Patriot National, Inc. et al., No. 16-cv-2767 (S.D.N.Y.); CVI Investments, Inc. v. Patriot National, Inc., No. 1:16-cv-2787 (S.D.N.Y.)

Counsel:

We propose that the depositions we noticed be scheduled for the following dates:

- Hudson Bay Capital Management LP – April 17
- CVI Investments, Inc. – April 24
- Victor Simonte - April 25, May 1
- Susan Sproule – April 25, May 1
- Michael Spolan – May 4, 5
- Andrew Singer - May 4, 5
- Yoav Roth – May 17-19
- Joel Gutteridge – May 17-19
- George Antonopoulous – May 22-26
- Martin Kobinger – May 22-26
- Brad Alles – May 22-26

Please let us know by next Tuesday whether these dates will work.

Adam

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**From:** Mintz, Adam S.

**Sent:** Tuesday, April 04, 2017 7:34 PM

**To:** ['Serrin.Turner@lw.com'](mailto:Serrin.Turner@lw.com) ([Serrin.Turner@lw.com](mailto:Serrin.Turner@lw.com)); [Chris.Clark@lw.com](mailto:Chris.Clark@lw.com); [Michelle.Nicholson@lw.com](mailto:Michelle.Nicholson@lw.com); [Leah.Friedman@lw.com](mailto:Leah.Friedman@lw.com); [KrabillL@ballardspahr.com](mailto:KrabillL@ballardspahr.com); [PeerceM@ballardspahr.com](mailto:PeerceM@ballardspahr.com); [GoldbergerM@ballardspahr.com](mailto:GoldbergerM@ballardspahr.com); [Corey.Calabrese@lw.com](mailto:Corey.Calabrese@lw.com); ['dberger@abv.com'](mailto:dberger@abv.com)

**Cc:** Bondi, Bradley J.; Owen, David; Kavalier, Thomas J.; Torres, Ivan; Weinstein, Eric; [jwilson@broadandcassel.com](mailto:jwilson@broadandcassel.com); [ekolmansberger@broadandcassel.com](mailto:ekolmansberger@broadandcassel.com); [mgomberg@broadandcassel.com](mailto:mgomberg@broadandcassel.com); [WMaher@WMD-LAW.com](mailto:WMaher@WMD-LAW.com); [gmahfood@broadandcassel.com](mailto:gmahfood@broadandcassel.com); [ABialek@WMD-LAW.COM](mailto:ABialek@WMD-LAW.COM)

**Subject:** RE: Hudson Bay Master Fund Ltd. v. Patriot National, Inc. et al., No. 16-cv-2767 (S.D.N.Y.); CVI Investments, Inc. v. Patriot National, Inc., No. 1:16-cv-2787 (S.D.N.Y.)

Counsel:

Last Thursday, we served the deposition notices listed in our e-mail below. In light of the current schedule, we intend to move forward with these depositions. Please provide dates for each of these depositions between mid-April and the end of May.

Adam

---

**From:** Mintz, Adam S.

**Sent:** Thursday, March 30, 2017 1:40 PM

**To:** ['Serrin.Turner@lw.com'](mailto:Serrin.Turner@lw.com) ([Serrin.Turner@lw.com](mailto:Serrin.Turner@lw.com)); [Chris.Clark@lw.com](mailto:Chris.Clark@lw.com); [Michelle.Nicholson@lw.com](mailto:Michelle.Nicholson@lw.com); [Leah.Friedman@lw.com](mailto:Leah.Friedman@lw.com); [KrabillL@ballardspahr.com](mailto:KrabillL@ballardspahr.com); [PeerceM@ballardspahr.com](mailto:PeerceM@ballardspahr.com); [GoldbergerM@ballardspahr.com](mailto:GoldbergerM@ballardspahr.com); [Corey.Calabrese@lw.com](mailto:Corey.Calabrese@lw.com); ['dberger@abv.com'](mailto:dberger@abv.com)

**Cc:** Bondi, Bradley J.; Owen, David; Kavalier, Thomas J.; Torres, Ivan; Weinstein, Eric; [jwilson@broadandcassel.com](mailto:jwilson@broadandcassel.com); [ekolmansberger@broadandcassel.com](mailto:ekolmansberger@broadandcassel.com); [mgomberg@broadandcassel.com](mailto:mgomberg@broadandcassel.com); [WMaher@WMD-LAW.com](mailto:WMaher@WMD-LAW.com); [gmahfood@broadandcassel.com](mailto:gmahfood@broadandcassel.com); [ABialek@WMD-LAW.COM](mailto:ABialek@WMD-LAW.COM)

**Subject:** Hudson Bay Master Fund Ltd. v. Patriot National, Inc. et al., No. 16-cv-2767 (S.D.N.Y.); CVI Investments, Inc. v. Patriot National, Inc., No. 1:16-cv-2787 (S.D.N.Y.)

Counsel:

Attached please find Defendants' notices of deposition for the following entities and individuals:

- CVI Investments, Inc.
- Hudson Bay Capital Management LP

- Victor Simonte
- Yoav Roth
- George Antonopoulous
- Joel Gutteridge
- Susan Sproule
- Michael Spolan
- Andrew Singer
- Martin Kobinger
- Brad Alles

Due to the size of the attachments. They are being sent in 3 parts.  
Adam

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**Adam S. Mintz | Associate**

Cahill Gordon & Reindel LLP

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